

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE: ) Case No. 16-39654  
          ) (Jointly Administered)  
ARGON CREDIT, LLC, *et al*, )  
          ) Chapter 7  
Debtors. )  
          ) Hon. Deborah L. Thorne  
          ) ) Hearing Date: October 15, 2020 at 9:00 a.m  
          )

**NOTICE OF MOTION**

TO: See attached list

PLEASE TAKE NOTICE that on October 15, 2020 at 9:00 a.m., I will appear before the Honorable Deborah L. Thorne, or any judge sitting in her place, and present the *Motion for Entry of an Order: (I) Pursuant to Bankruptcy Rule 9019 Approving Settlement with Certain Adversary Defendants and (II) Approving Payment of Contingency Fee*. Parties-in-interest may obtain a copy of the Motion by contacting undersigned counsel.

**This motion will be presented and heard electronically using Zoom for Government.** No personal appearance in court is necessary or permitted. To appear and be heard on the motion, you must do the following:

**To appear by video**, use this link: <https://www.zoomgov.com/>. Then enter the meeting ID and password.

**To appear by telephone**, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and password.

**Meeting ID and password.** The meeting ID and password for this hearing will be provided by chambers at a later date. These credentials can also be found on the judge's page on the court's web site, at <https://www.ilnb.uscourts.gov/content/judge-deborah-l-thorne>.

**If you object to this motion** and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without a hearing.

Dated: September 24, 2020

**KAREN R. GOODMAN, CHAPTER 7  
TRUSTEE**

By: /s/ Elizabeth L. Janczak  
One of Her Attorneys

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          ) (Jointly Administered)  
ARGON CREDIT, LLC, *et al*, )  
          ) Chapter 7  
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          ) Hon. Deborah L. Thorne  
          ) ) Hearing Date: October 15, 2020 at 9:00 a.m  
          )

**CERTIFICATE OF SERVICE**

I, Elizabeth L. Janczak, an attorney, hereby certify that on September 24, 2020, I caused a true and correct copy of the foregoing *Notice of Motion and Motion for Entry of an Order: (I) Pursuant to Bankruptcy Rule 9019 Approving Settlement with Certain Adversary Defendants and (II) Approving Payment of Contingency Fee*, to be filed with the Court and served upon the following parties by the manners listed.

/s/ Elizabeth L. Janczak

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Atn: Billing Department  
222 N Sepulveda 18th Floor  
El Segundo, CA 90245-5614

Venkatasubramaniam, Shreyas  
350 West Oakdale Avenue #1308  
Chicago, IL 60657-5657

Virola, Amanda L  
5642 W Melrose St. Garden Unit  
Chicago, IL 60634-4313

Walter Yarbrough  
3011 W. 61st  
Chicago, IL 60629-3248

Jeffrey Wilens  
Lakeshore Law Center  
18340 Yorba Linda Blvd.  
Yorba Linda, CA 92886-4058

Jeffrey Wilens  
 Lakeshore Law Center  
 18340 Yorba Linda Blvd., Suite 107-610  
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William Harris  
 Document Page 12 of 29  
 302 West Blackburn  
 Paris, IL 61944-1037

Wolfe, Raviv  
 571 Vernon Woods Dr.  
 Valparaiso, IN 46385-9106

Woodworth, Allison J  
 516 W Melrose St Apt 306  
 Chicago, IL 60657-3787

Yodlee  
 Lockbox Dept CH 17505  
 Palatine, IL 60055-7405

Zumski, Gary  
 4204 E. Frontage Rd  
 Rolling Meadows, IL 60008-2520

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Bank of America  
 PO box 982234  
 El Paso TX 79948-2234

DIRECTV LLC  
 Attn: Bankruptcies  
 POB 6550  
 Greenwood Village CO 80155-6550

Jefferson Capital System  
 16 Mcleland Rd  
 Saint Cloud MN 56303

Portfolio Recovery  
 120 Corporate Blvd  
 Ste 100  
 Norfolk VA 23502

(d)Portfolio Recovery Associates LLC  
 POB 41067  
 Norfolk VA 23541-1067

TransUnion  
 555 West Adams Street  
 Chicago, IL 60661

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Ad Hoc Committee of Unsecured Creditors (u)Brittney Gale Alaimo (u)Christina Alston

(d)American Express National Bank  
 c/o Becket and Lee LLP  
 PO Box 3001  
 Malvern PA 19355-0701

(u)Michael P. Bailey

(u)Anitra Aytman Billups

(u)John K. Brigoli

(u)Stephen Craig Brown

(u)Alejandro Camacho

(u)Joseph Canfora

(u)Matthew Cantor

(u)Dennis C. Cantrell

(u)Shelly A. DeRousse

(u)Donald Dotson

(u)Dennis B. Estrada-Jimenez

(u)FactorLaw

(u)Pete Ferro

(u)Lindsay Fore

(u)John Fountaine

(u)Fund Recovery Services, LLC

(u)Gensburg Calandriello & Kanter, P.C.

(u)Rosemary Gonzalez-Lopez

(u)Sonja Hallmon

(u)Karensa Hutchens

(u)April D. Johnson

(u)Joseph Martinez  
3746 Morning Glory Ave.  
AK 99534-8000

(u)Kim L. King

(u)Latonya D. Kitchen

(u)Kutchins, Robbins & Diamond, Ltd.

(u)Little Owl Argon, LLC

(u)Theresa Madrigal

(u)Margin LLC

(u)Margin LLC, Mark Triffler, Pete Ferro and

(u)Mark Triffler Declaration of Trust

(u)Yolanda J. McKinney

(u)Morris Anderson & Associates, Ltd.

(u)Mathew V. Muniz

(u)Peraza Capital and Investment, LLC

(u)Jerardo Prado

(u) Eric Shorter

(u) Dean Sipe

(u) Jennifer J. Solorio

(u) Felicia M. Spiller

(u) Sugar Felsenthal Grais & Hammer, LLP

(u) Sharon S. Tatumausbie

(u) The Cardinal Trust

(u) Mark Triffler

(u) Karen Vinson

(u) Lois West

(u) Samantha Rae Wilder

End of Label Matrix	
Mailable recipients	215
Bypassed recipients	56
Total	271

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

IN RE: ) Case No. 16-39654  
          ) (Jointly Administered)  
ARGON CREDIT, LLC, *et al*, )  
          ) Chapter 7  
Debtors. )  
          ) Hon. Deborah L. Thorne  
          ) ) Hearing Date: October 15, 2020 at 9:00 a.m.  
          )

**MOTION FOR ENTRY OF AN ORDER: (I) PURSUANT TO BANKRUPTCY RULE  
9019 APPROVING SETTLEMENT WITH CERTAIN ADVERSARY DEFENDANTS  
AND (II) APPROVING PAYMENT OF CONTINGENCY FEE**

Karen R. Goodman (the “*Trustee*”), the chapter 7 Trustee in the above captioned cases, by and through her undersigned counsel, hereby submits this motion (the “*Motion*”) to this Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) for entry of an order approving settlement between the Trustee and certain defendants in various adversary proceeding and approving payment of the contingency fee owed to Freeborn & Peters LLP (“*Freeborn*”). In support of the Motion, the Trustee states as follows:

**PRELIMINARY STATEMENT**

1. In December 2018, the Trustee (through her predecessor chapter 7 trustee, Eugene Crane) brought several separate adversary proceedings against approximately two dozen defendants asserting claims for, among other things, breach of fiduciary duty and avoidance and recovery of pre-petition transfers under chapter 5 of the Bankruptcy Code. The Trustee has settled or resolved claims against certain of the initial defendants piecemeal, but has now, finally, reached a semi-global settlement with eleven defendants in three separate pending adversary proceedings which will result in gross settlement proceeds of \$476,000, plus a \$20,000

administrative expense claims waiver and a pre-petition general unsecured claims waiver of approximately \$4.3 million.

2. This settlement is the product of extensive negotiations between the Trustee and the Settling Defendants<sup>1</sup> and will substantially narrow the number of defendants and issues which will proceed in litigation before this Court. As discussed in detail below, the proposed settlements will yield a substantial benefit to the estates. The Trustee requests that the settlements be approved.

### **JURISDICTION AND VENUE**

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(a) and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1408.

5. The predicate for the relief requested in this Motion is Bankruptcy Rule 9019.

### **BACKGROUND**

#### **I. General Case Background**

6. On December 16, 2016 (the “*Petition Date*”), Argon Credit, LLC (“*Argon Credit*”) and Argon X, LLC (“*Argon X*,” together with Argon Credit, the “*Debtors*”) filed voluntary petitions for relief under chapter 11 of title 11 of the United State Code (the “*Bankruptcy Code*”).

7. On January 11, 2017, the *Debtors*’ bankruptcy cases were converted from cases under chapter 11 to cases under chapter 7.

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<sup>1</sup> The Settling Defendants are: Peter Ferro, Jr., Harry Madanyan, Joseph Canfora, Mark Triffler, John Kuhlman, Bruce Breitweiser, Byron Faermark, Margon LLC, Mark Triffler as trustee of Mark Triffler Declaration of Trust Dated December 5, 1991, Barry Edmonson as Trustee of The Cardinal Trust, and Meghan Hubbard.

8. Deborah K. Ebner was appointed the interim chapter 7 trustee of the Debtors' estates, but resigned on April 17, 2017.

9. Eugene Crane was appointed as interim chapter 7 trustee on April 17, 2017 and confirmed by the Court on July 6, 2017.

10. On July 11, 2017, the Court entered an order authorizing Eugene Crane, as chapter 7 trustee, to employ Freeborn as special counsel to, among other things, pursue chapter 5 causes of action on a contingency fee basis. (ECF No. 207). Pursuant to the court-approved terms of Freeborn's engagement, Freeborn is entitled to a contingency fee of: (i) 30% of the cash value of the settlement prior to filing a lawsuit (the "*Pre-Suit Contingency Fee*") or 40% of the cash value of the settlement after filing a lawsuit (the "*Post-Suit Contingency Fee*," together with the Pre-Suit Contingency Fee, the "*Settlement Amount Contingency Fee*"), (ii) plus the cash equivalent value of any claim waiver obtained (the "*Claim Waiver Contingency Fee*").

11. On June 1, 2020, the Trustee was appointed as the successor chapter 7 trustee after Mr. Crane's resignation.

12. On July 30, 2020, the Court entered an order authorizing the Trustee to retain Freeborn on the same terms as previously approved with respect to Mr. Crane. (ECF No. 505).

## **II. The Adversary Actions**

### **A. The Insider Adversary**

13. On December 14, 2018, Mr. Crane, the then-chapter 7 trustee, filed a complaint against multiple defendants, including Peter Ferro, Jr., Harry Madanyan, Joseph Canfora, Mark Triffler, John Kuhlman, Bruce Breitweiser, and Byron Faermark (collectively, the "*D&O Defendants*") for breach of fiduciary duty as case number 18-ap-00947 (the "*Insider*

*Adversary). The complaint asserted claims against the D&O Defendants for breach of fiduciary duty to Argon Credit for actions taken pre-petition.*

14. The D&O Complaint alleged that the D&O Defendants breached their fiduciary to Argon Credit by, among other things, engaging in a scheme to funnel assets away from the Debtors and their creditors for which many of them personally benefitted, improperly transferring assets to insiders, and knowingly submitting false or misleading financial reports to the Debtors' secured lender to conceal the transfer of Argon Credit's assets.

15. The complaint sought damages from the defendants in excess of \$6 million.

B. The Avoidance Claims Adversary

16. On December 14, 2018, Mr. Crane, the then-chapter 7 trustee, filed a complaint against Margon LLC ("Margon"), Mark Triffler as trustee of Mark Triffler Declaration of Trust Dated December 5, 1991 (the "Triffler Trust"), Barry Edmonson as Trustee of The Cardinal Trust (the "Cardinal Trust") as case number 18-ap-00947 (the "Avoidance Claims Adversary"),<sup>2</sup> asserting claims for, among other things, recharacterization of debt to equity under state and federal law and avoidance and recovery of transfers made by Argon Credit under chapter 5 of the Bankruptcy Code.

17. In particular, the complaint sought to avoid as fraudulent transfers \$1,023,611.12 to Margon, \$74,722.22 to Triffler Trust, and \$99,444.44 to Cardinal Trust.<sup>3</sup>

C. The Hubbard Adversary

18. On December 14, 2018, Mr. Crane, the then-chapter 7 trustee, filed a complaint against Meghan Hubbard as case number 18-ap-00942 (the "Hubbard Adversary," together with

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<sup>2</sup> Little Owl Argon LLC is also a named defendant in the Avoidance Claims Adversary but is not a party to these proposed settlements.

<sup>3</sup> In the alternative to the fraudulent transfer claims, the complaint sought to avoid as preferential transfers \$197,416.68 to Margon, \$74,722.22 to Triffler Trust, and \$99,444.44 to Cardinal Trust.

the Insider Adversary and the Avoidance Actions Adversary, the “*Adversary Proceedings*”), asserting claims for, among other things, avoidance and recovery of alleged preferential transfers totaling \$28,964.00 pursuant to 11 U.S.C. §§ 547 and 550.

### **III. The Proposed Settlements**

19. Since the filing of the complaints, the Trustee (and her predecessor, Mr. Crane) have been engaged in discussions regarding the merits of the various claims against the defendants and potential settlement. Settlement discussions proved logically challenging given the number of total defendants, types of claims asserted, number of different counsel involved, and various procedural postures with some defendants answering, others extending their deadlines, and another moving to dismiss.

20. After much back-and-forth, and several exchanges of information and documents, the Trustee and the Settling Defendants have reached a semi-global settlement which will yield nearly \$500,000 in cash and administrative claim waivers to the estates, narrow the scope of the issues and defendants in the Insider Adversary and Avoidance Actions Adversary, and will result in the dismissal of the Hubbard Adversary

21. The semi-global settlement is documented in five (5) separate settlement agreements discussed below.

#### **A. The Margon Group Settlement Agreement**

22. The Trustee exchanged information, negotiated, and agreed to settle disputes with Settling Defendants Margon, Triffler Trust, Cardinal Trust, Canfora, Triffler, Ferro, and Hubbard (collectively, the “*Margon Group*”), who are defendants in the Adversary Proceedings. To that end, the parties entered into a settlement agreement (the “*Margon Group Settlement Agreement*”)

fully resolving the parties' disputes. A true and correct copy of the Margon Group Settlement Agreement is attached hereto as Exhibit 1.

23. The relevant terms of the Margon Group Settlement Agreement are summarized as follows:<sup>4</sup>

- The Margon Group shall pay the Trustee the sum of \$371,000.00 (the “*Margon Group Settlement Sum*”) in full satisfaction of the claims asserted against them in the Adversary Proceedings.
- The Margon Group Settlement Sum is allocated among the Adversary Proceedings as follows: (i) \$191,000.00, inclusive of applicable insurance proceeds under Argon Credit’s directors’ and officers’ insurance policy toward the Insider Adversary, (ii) \$180,000.00 toward the Avoidance Claims Adversary and Hubbard Adversary.
- The Margon Group shall waive the claims they asserted against the Debtors, including a claim filed by Margon in the amount of \$2,059,964.22, a claim filed by Triffler Trust in the amount of \$1,124,444.44, a claim filed by Cardinal Trust in the amount of \$1,124,444.44, and a section 503 administrative expense claim Margon asserts it has in the approximate amount of \$20,000.00 for post-petition expenses advanced to the estates.
- The settlement is conditioned upon the effective date of settlements between the Trustee and Kuhlman, Faermark, and Breitweiser.
- The Trustee shall release the Margon Group from all claims general and common to the Debtors and their creditors that have been brought or were able to be brought exclusively by the Trustee, and/or arise from or relate to the Debtors, the operation of their business, and/or the Adversary Proceedings, including without limitation the claims for relief asserted or that could have been asserted in the Adversary Proceedings.
- The Margon Group shall release the Trustee, the Debtors, and their estates from any and all claims that arise from or relate to the Debtors or the operation of their business, including any such claims that could have been asserted by the Margon Group in the Adversary Proceedings.

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<sup>4</sup>The discussion of the settlement with the Margon Group set forth in this Motion is merely a summary of terms. All parties-in-interest should read the entire Margon Group Settlement Agreement to understand the entire scope of the parties’ agreements. In the event of any discrepancy, the terms of the Margon Group Settlement Agreement shall govern.

- Upon Court approval and the occurrence of the agreement's effective date, the Trustee will dismiss the Adversary Proceedings against the Margon Group with prejudice.

B. The Breitweiser Settlement Agreement

24. The Trustee exchanged information, negotiated, and agreed to settle disputes with Breitweiser who is a defendant in Insider Adversary. To that end, the parties entered into a settlement agreement (the "*Breitweiser Settlement Agreement*") fully resolving the parties' disputes. A true and correct copy of the Breitweiser Settlement Agreement is attached hereto as Exhibit 2.<sup>5</sup>

25. The relevant terms of the Breitweiser Settlement Agreement are summarized as follows:<sup>6</sup>

- Breitweiser shall pay the Trustee the sum of \$12,500.00 (the "*Breitweiser Settlement Sum*") in full satisfaction of the claims asserted against him in the Insider Adversary.
- The settlement is conditioned upon the effective date of settlements between the Trustee and Kuhlman, Faermark, and the Margon Group.
- The Trustee shall release Breitweiser from all claims general and common to the Debtors and their creditors that have been brought or were able to be brought exclusively by the Trustee, and/or arise from or relate to the Debtors, the operation of their business, and/or the Insider Adversary, including without limitation the claims for relief asserted or that could have been asserted in the Insider Adversary.
- Breitweiser shall release the Trustee, the Debtors, and their estates from any and all claims that arise from or relate to the Debtors or the operation of their business, including any such claims that could have been asserted by Breitweiser in the Insider Adversary.

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<sup>5</sup> The Trustee is awaiting a signature page from Mr. Breitweiser and, accordingly, the Trustee attaches the unsigned version of the approved settlement agreement between the parties.

<sup>6</sup>The discussion of the settlement with Breitweiser set forth in this Motion is merely a summary of terms. All parties-in-interest should read the entire Breitweiser Settlement Agreement to understand the entire scope of the parties' agreements. In the event of any discrepancy, the terms of the Breitweiser Settlement Agreement shall govern.

- Upon Court approval and the occurrence of the agreement's effective date, the Trustee will dismiss the Insider Adversary against Breitweiser.

C. The Faermark Settlement Agreement

26. The Trustee exchanged information, negotiated, and agreed to settle disputes with Faermark who is a defendant in Insider Adversary. To that end, the parties entered into a settlement agreement (the "*Faermark Settlement Agreement*") fully resolving the parties' disputes. A true and correct copy of the Faermark Settlement Agreement is attached hereto as Exhibit 3.<sup>7</sup>

27. The relevant terms of the Faermark Settlement Agreement are summarized as follows:<sup>8</sup>

- Faermark shall pay the Trustee the sum of \$12,500.00 (the "*Faermark Settlement Sum*") in full satisfaction of the claims asserted against him in the Insider Adversary.
- The settlement is conditioned upon the effective date of settlements between the Trustee and Breitweiser, Kuhlman, and the Margon Group.
- The Trustee shall release Faermark from all claims general and common to the Debtors and their creditors that have been brought or were able to be brought exclusively by the Trustee, and/or arise from or relate to the Debtors, the operation of their business, and/or the Insider Adversary, including without limitation the claims for relief asserted or that could have been asserted in the Insider Adversary.
- Faermark shall release the Trustee, the Debtors, and their estates from any and all claims that arise from or relate to the Debtors or the operation of their business, including any such claims that could have been asserted by Faermark in the Insider Adversary.

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<sup>7</sup> The Trustee is awaiting a signature page from Mr. Faermark and, accordingly, the Trustee attaches the unsigned version of the approved settlement agreement between the parties.

<sup>8</sup>The discussion of the settlement with Faermark set forth in this Motion is merely a summary of terms. All parties-in-interest should read the entire Faermark Settlement Agreement to understand the entire scope of the parties' agreements. In the event of any discrepancy, the terms of the Faermark Settlement Agreement shall govern.

- Upon Court approval and the occurrence of the agreement's effective date, the Trustee will dismiss the Insider Adversary against Faermark.

D. The Kuhlman Settlement Agreement

28. The Trustee exchanged information, negotiated, and agreed to settle disputes with Kuhlman who is a defendant in Insider Adversary. To that end, the parties entered into a settlement agreement (the "*Kuhlman Settlement Agreement*") fully resolving the parties' disputes. A true and correct copy of the Kuhlman Settlement Agreement is attached hereto as Exhibit 4.

29. The relevant terms of the Kuhlman Settlement Agreement are summarized as follows:<sup>9</sup>

- Kuhlman shall pay the Trustee the sum of \$60,000.00 (the "*Kuhlman Settlement Sum*") in full satisfaction of the claims asserted against him in the Insider Adversary.
- The settlement is conditioned upon the effective date of settlements between the Trustee and Breitweiser, Faermark, and the Margon Group.
- The Trustee shall release Kuhlman from all claims general and common to the Debtors and their creditors that have been brought or were able to be brought exclusively by the Trustee, and/or arise from or relate to the Debtors, the operation of their business, and/or the Insider Adversary, including without limitation the claims for relief asserted or that could have been asserted in the Insider Adversary.
- Kuhlman shall release the Trustee, the Debtors, and their estates from any and all claims that arise from or relate to the Debtors or the operation of their business, including any such claims that could have been asserted by Kuhlman in the Insider Adversary.
- Upon Court approval and the occurrence of the agreement's effective date, the Trustee will dismiss the Insider Adversary against Kuhlman.

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<sup>9</sup>The discussion of the settlement with Kuhlman set forth in this Motion is merely a summary of terms. All parties-in-interest should read the entire Kuhlman Settlement Agreement to understand the entire scope of the parties' agreements. In the event of any discrepancy, the terms of the Kuhlman Settlement Agreement shall govern.

E. The Madanyan Settlement Agreement

30. The Trustee exchanged information, negotiated, and agreed to settle disputes with Madanyan who is defendant in Insider Adversary. To that end, the parties entered into a settlement agreement (the “*Madanyan Settlement Agreement*”)<sup>10</sup> fully resolving the parties’ disputes. A true and correct copy of the Madanyan Settlement Agreement is attached hereto as Exhibit 5.

31. The relevant terms of the Madanyan Settlement Agreement are summarized as follows:<sup>11</sup>

- Madanyan shall pay the Trustee the sum of \$10,000.00 (the “*Madanyan Settlement Sum*”) in full satisfaction of the claims asserted against him in the Insider Adversary.
- The settlement is conditioned upon the effective date of settlements between the Trustee and Breitweiser, Faermark, Kuhlman, and the Margon Group.
- The Trustee shall release Madanyan from all claims general and common to the Debtors and their creditors that have been brought or were able to be brought exclusively by the Trustee, and/or arise from or relate to the Debtors, the operation of their business, and/or the Insider Adversary, including without limitation the claims for relief asserted or that could have been asserted in the Insider Adversary.
- Madanyan shall release the Trustee, the Debtors, and their estates from any and all claims that arise from or relate to the Debtors or the operation of their business, including any such claims that could have been asserted by Kuhlman in the Insider Adversary.
- Upon Court approval and the occurrence of the agreement’s effective date, the Trustee will dismiss the Insider Adversary against Madanyan.

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<sup>10</sup> The Margon Group Settlement Agreement, Breitweiser Settlement Agreement, Faermark Settlement Agreement, Kuhlman Settlement Agreement, and Madanyan Settlement Agreement shall collectively be referred to herein as the “Settlement Agreements.”

<sup>11</sup>The discussion of the settlement with Madanyan set forth in this Motion is merely a summary of terms. All parties-in-interest should read the entire Madanyan Settlement Agreement to understand the entire scope of the parties’ agreements. In the event of any discrepancy, the terms of the Madanyan Settlement Agreement shall govern.

**RELIEF REQUESTED**

32. By this Motion, the Trustee seeks entry of an order approving the Settlement Agreements pursuant to Bankruptcy Rule 9019(a) and entry of an order approving the Settlement Amount Contingency Fee owed to Freeborn.

**A. Approval of the Settlement Agreements**

33. Pursuant to Bankruptcy Rule 9019(a), “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Such settlements should be approved by a court if they are fair and reasonable and in the best interests of the debtor’s estate. *See Depoister v. Mary M. Halloway Found.*, 36 F.3d 582, 586 (7th Cir. 1994) (“In conducting a hearing under Rule 9019(a), the bankruptcy court is to determine whether the proposed compromise is fair and equitable and in the best interests of the bankruptcy estate.”) (internal citations omitted); *In re Andreuccetti*, 975 F.2d 413, 421 (7th Cir. 1992) (holding that Bankruptcy Rule 9019(a) authorizes the court to approve a settlement if “the settlement is in the best interests of the estate”); *In re Energy Coop., Inc.*, 886 F.2d 921, 926-27 (7th Cir. 1989) (providing that “[t]he benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate”); *In re Griffen Trading Co.*, 270 B.R. 883, 903 (Bankr. N.D. Ill. 2001), *aff’d*, 270 B.R. 905 (N.D. Ill. 2001) (citing *LaSalle Nat'l Bank v. Holland (In re Am. Reserve Corp.)*, 841 F.2d 159, 161 (7th Cir. 1987)).

34. Compromises are tools for expediting the administration of the case and reducing administrative costs and are favored in bankruptcy. *See Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000) (“Judges naturally prefer to settle complex litigation than to see it litigated to the hilt, especially when it is litigation in a bankruptcy proceeding – the expenses of administering the bankruptcy often consume most or even all of the bankrupt’s assets.”); *Meyers v. Martin (In re*

*Martin*), 91 F.3d 389, 393 (3d Cir. 1996) (“To minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy.”); *In re A&C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986).

35. The Court should grant a trustee’s request for approval of a settlement except in the very limited circumstance where a proposed settlement “falls below the lowest point in the range of reasonableness.” *Energy Coop.*, 886 F.2d at 929; *Official Comm. of Unsecured Creditors of Artra Group, Inc. v. Artra Group, Inc. (In re Artra Group, Inc.)*, 300 B.R. 699, 702 (Bankr. N.D. Ill. 2003) (same); *In re Rimsat, Ltd.*, 224 B.R. 685, 688 (Bankr. N.D. Ind. 1997) (providing that the court is required only “to canvas the issues in order to determine whether the settlement falls below the lowest point in the range of reasonableness”); *In re Telesphere Commc’ns, Inc.*, 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994).

36. In determining whether a proposed settlement is appropriate, neither an evidentiary hearing nor a rigid mathematical analysis is required. *Depoister*, 36 F.3d at 586, 588 (evidentiary hearing not required); *In re Energy Coop.*, 886 F.2d at 928-29 (rigid mathematical analysis of settlement values not required); *In re Am. Reserve Corp.*, 841 F.2d at 163 (mini-trial not required). Rather, the Seventh Circuit offers the following guidelines:

Central to the bankruptcy judge’s determination is a comparison of the settlement’s terms with the litigation’s probable costs and probable benefits. Among the factors the bankruptcy judge should consider in [the] analysis are the litigation’s probability of success, the litigation’s complexity, and the litigation’s attendant expense, inconvenience, and delay.

*Am. Reserve Corp.*, 841 F.2d at 161 (citations omitted).

37. The proposed semi-global settlement with the Settling Defendants satisfies this standard. The Settling Defendants have agreed to pay a total settlement sum of \$476,000.00 summarized as follows:

<b>Settling Defendant</b>	<b>Settlement Sum</b>
Margon Group	\$381,000.00
Breitweiser	\$12,500.00
Faermark	\$12,500.00
Kuhlman	\$60,000.00
Madanyan	\$10,000.00
<b>Total:</b>	<b>\$476,000.00</b>

38. The Settling Defendants have also agreed to waive their pre-petition claims against the estates which and Margon has agreed to waive its asserted \$20,000.00 post-petition administrative expense claim. Thus, the total value to the estates is \$496,000 in cash and administrative expense claims waivers plus more than \$4.3 million in pre-petition general unsecured claims (approximately 10% of the general unsecured claims pool).

39. The Trustee submits that this settlement is well within the reasonable range of possible litigation outcomes taking into account the defenses the Settling Defendants have asserted, the information they have provided in support of those defenses, and the value of the claims waivers to the estates. In particular, each of the Settling Defendants had varying levels of responsibility and involvement in Argon Credit's operations impacting their potential liability for breach of fiduciary duty. With the exception of Ferro, none of the Settling Defendants were officers of Argon Credit.

40. Additionally, this settlement avoids the costs of litigation which are likely to be substantial and the risk of non-collection, especially given that there are limited directors' and officers' liability insurance proceeds available all of which are being contributed as part of this semi-global settlement.

41. This settlement allows the Trustee to avoid the uncertainty associated with litigation while maximizing the value of the Debtors' estates for the benefit of their creditors.

Accordingly, the Trustee submits that the Court should approve the Settlement Agreement pursuant to Bankruptcy Rule 9019(a).

**B. Approval of the Settlement Amount Contingency Fee**

42. The Trustee also requests approval to pay Freeborn the Settlement Amount Contingency Fee per the terms of Freeborn's retention of which Freeborn is entitled to a Post-Suit Contingency Fee of 40%.

43. The Trustee submits that Freeborn is entitled to the Settlement Amount Contingency Fee totaling \$80,000.00 calculated as: (i) 40% of the \$180,000.00 settlement sum (\$72,000.00) paid by the Margon Group in settlement of the Avoidance Claims Adversary and Hubbard Adversary,<sup>12</sup> plus (ii) 40% of the cash value of the \$20,000.00 administrative expense claim waiver (\$8,000.00) by Margon.<sup>13</sup>

44. Accordingly, the Trustee requests that the Court approve, on an interim basis, payment to Freeborn of \$80,000.00 from the settlement proceeds, representing the total Settlement Amount Contingency Fee owed from the settlement.

**NOTICE**

45. The Trustee has served notice of this Motion on the Debtors, U.S. Trustee, and all creditors pursuant to Bankruptcy Rule 2002 and stated that copies of the complete Motion may be obtained from counsel for the Trustee upon request. The Trustee submits that such notice is appropriate under the circumstances.

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<sup>12</sup> Freeborn's fees for services related to the Insider Adversary are payable at an hourly rate to be paid at such time as Freeborn submits and the Court approves an application for such fees.

<sup>13</sup>The Trustee is not requesting payment of any Claim Waiver Contingency Fees on account of the waiver of the Settling Defendants' pre-petition general unsecured claims at this time, but reserves the right to request authority to pay such fees in the future.

**WHEREFORE**, the Trustee respectfully requests that the Court enter an order: (i) approving the Settlement Agreements with the Settling Defendants, (ii) approving payment to Freeborn, on an interim basis, of \$80,000.00 representing the total Settlement Amount Contingency Fee, and (iii) granting such other and further relief as this Court deems just and proper.

Dated: September 24, 2020

**KAREN R. GOODMAN, CHAPTER 7  
TRUSTEE**

By: /s/ Elizabeth L. Janczak  
One of Her Attorneys

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